

**IN THE MATTER**

of the Resource Management Act 1991

**AND**

**IN THE MATTER**

of the hearing of submissions by the Whangarei District Council on Plan Changes 85, 85A, 85B, 85D, 86A and Consequential Amendments to the Whangarei District Plan

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**MEMORANDUM OF COUNSEL ON BEHALF OF FONTERRA LIMITED  
PROVIDING ADDITIONAL INFORMATION**

**28 JULY 2017**

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## Background

1. At the hearing of submissions on the Plan Changes to the Whangarei District Plan ("**Plan**") on 4 July 2017, the Hearings Commissioners requested that Fonterra Limited ("**Fonterra**") provide additional information in relation to:
  - (a) vehicle movements generated by Fonterra's Kauri Milk Processing Site ("**Site**");
  - (b) the height of existing buildings at the Kauri Site; and
  - (c) examples of elevations from other Fonterra sites to show the potential height of boilers and driers.
2. The Commissioners also allowed Fonterra the opportunity to respond to the evidence of Mr Newsome, which was provided after the deadline for evidence and given to Fonterra at the start of its presentation. Mr Newsome's evidence addressed the rationale for New Zealand Transport Agency's ("**NZTA**") proposed traffic movement rules for the Strategic Rural Industries Environment ("**SRIE**").
3. This memorandum provides the additional information requested by the Commissioners, as well as Fonterra's response to NZTA's proposed traffic movement rules and Mr Newsome's evidence.

## Traffic counts

4. Peak production season is the most appropriate time to count traffic movements to the Kauri Site. As the issue has arisen outside of peak production season, Fonterra has been unable to survey movements to and from the Kauri Site and therefore establish precise traffic counts.<sup>1</sup> However, Fonterra has sought input from representatives at the Kauri Site, who have provided the following figures:
  - (a) There are 320 staff on site, however only approximately 50 per cent of these staff are on site at any one time. At worst, in the event that all staff travel to and from the Kauri Site in a single day, there would

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<sup>1</sup> As an example, a count undertaken on 27 July 2017 showed 644 movements in a 24 hour period, well below previous counts referred to below.

be 640 vehicle movements per day (assuming every staff member only enters / exits the site once each day).

- (b) There are 42 tankers based at the Kauri Site. These tankers deliver raw milk to both Fonterra's Kauri and Maungaturoto sites. Based on two 12-hour shifts, and an average of two in / out movements each shift (a total of four movements per shift), there would be approximately 336 movements per day, or 168 per shift.<sup>2</sup>
  - (c) There are 18 bulk movements per day, which include for example the delivery / removal of cream between sites by third party contractors.
  - (d) There are 52 truck movements associated with the delivery of packaging and ingredients to, and fuel and the removal of product from, the Kauri Site (noting that the bulk of finished product is removed from the Kauri Site via rail).
  - (e) Finally, there are various movements from a number of different contractors travelling to and from the Kauri Site.
5. Therefore, based on these figures, the "back of the envelope" calculation at the hearing by NZTA of approximately 1,000 vehicle movements per day is likely to be a reasonable estimate for the Kauri Site during peak season.
  6. Opus was engaged by NZTA and Fonterra for the 2012 upgrade to the intersection between the Kauri Site and State Highway 1 ("**SH1**"). A report prepared at that time includes the detailed design report and traffic counts from certain dates in 2007 and 2008.
  7. A traffic count conducted by MWH on 18 September 2007 identified 616 vehicles entering the Kauri Site (being 461 cars, 101 tankers, and 54 other heavy commercial vehicles). This equates to approximately 1,232 vehicle movements per day (assuming each vehicle left the same day it arrived). This exceeds the "rough estimate" of 1,000 for current levels. The higher number of traffic movements in 2007 reflects the greater number of people employed on site at that time. The reduction over time is consistent with the reduction in overall traffic on SH1, referred to below. (The 2008 counts were undertaken at peak times only, so do not demonstrate the number of vehicle movements per day.)

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<sup>2</sup> Although some tankers will make three trips per shift if they are on a "short-route", others will only make one if they travel to the Far North. An average of two movements per shift therefore remains appropriate.

8. Opus has advised that the 2012 upgrade was designed to improve the safety of the intersection (rather than increase its capacity). Opus has, however, noted that the upgrades were nonetheless expected to increase capacity, including by allowing southbound vehicles exiting the Kauri Site to merge at speed, rather than waiting for larger gaps in traffic. The correspondence from Opus also noted that there is published information suggesting that a priority controlled intersection (like that at the Kauri Site) should perform adequately with "minor road" flows of up to 2,000 vehicles per day.

#### **NZTA's proposed traffic movement rules**

9. At the hearing on 5 July, NZTA continued to propose two new traffic movement rules controlling the maximum number of vehicles per day as a discretionary activity within the SRIE. Fonterra understands the proposed rules are worded as follows:

1. Any activity not directly associated with or ancillary to the zoned primary activity and generating more than 200 additional traffic movements per site, per day.

2. Activities directly associated with or ancillary to the zoned primary activity and generating more than 200 additional traffic movements per site, per day.

10. The rules share the same proposed matter of discretion:

The extent to which additional traffic movements are appropriately serviced by the existing transportation network, including access and methods to manage significant traffic effects.

11. At the hearing on 5 July 2017, NZTA explained its rationale behind these new rules. In summary, these rules are intended to create a consenting trigger to initiate dialogue with NZTA, allowing NZTA to request conditions in exchange for affected party approval. According to the evidence of Mr Newsome, the consenting trigger will:<sup>3</sup>

enable access to [the Kauri Site] to be considered in the event there is a substantive increase in traffic generation. This will ensure that adequate access provision is made for changes in traffic generating activities affecting the state highway corridor.

12. Fonterra continues to oppose NZTA's proposed rules for the SRIE, including for the following reasons:

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<sup>3</sup> Primary Statement of Evidence of Mark Newsome for the New Zealand Transport Agency Regarding Plan Changes 85 A-D, 86A-B, 87, 102 and 114 at [25].

- (a) The proposed rules are not the most appropriate way to achieve the Plan's objectives in terms of section 32 of the Resource Management Act 1991 ("**RMA**"). In particular, in Fonterra's submission, the proposed rules will impose costs on Fonterra for no real benefit beyond that afforded by NZTA's powers under its governing legislation. NZTA has not provided evidence to demonstrate that changes to the Kauri Site will result in effects on SH1 that need to be managed. Providing a consenting trigger simply to force engagement with NZTA is inappropriate.
- (b) The vehicle movement trigger proposed is arbitrary and unsuitable for the SRIE. In his evidence, Mr Newsome explains that NZTA's proposed 200 vehicle per day rule is guided by the limits in place in other environments proposed by the Plan Changes, and that NZTA "relied on the [Council's] assessment for setting this numeric trigger."<sup>4</sup> However, in Fonterra's submission, the objectives and policies for the SRIE are distinct from these other environments, such that a single vehicle limit across all of these zones is inappropriate. The SRIE is designed to enable Strategic Rural Industries and ensure a flexible management framework for their operation.<sup>5</sup> While a limit of 200 vehicles per day may be appropriate in other zones, it is not appropriate in the SRIE.
- (c) As the Commissioners identified, it is difficult to conceive what kind of consent conditions would result from the proposed rules. A consent condition requiring Fonterra to upgrade the intersection would require Fonterra to seek NZTA's approval (given that the changes would affect NZTA's SH1 asset). As the Commissioners noted, such a condition would be unlawful. Mr McKenzie for the Council identified an alternative solution, whereby a condition could require specified intersection performance standards to be maintained (but did not identify the method for achieving those performance standards). While potentially lawful, such a condition has the same ultimate problem of requiring Fonterra to seek approval from NZTA to make changes to the intersection.
- (d) As noted by the Commissioners, although Fonterra may generate additional traffic movements in the future, the rules do not account

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<sup>4</sup> Primary Statement of Evidence of Mark Newsome for the New Zealand Transport Agency Regarding Plan Changes 85 A-D, 86A-B, 87, 102 and 114 at [27].

<sup>5</sup> See for example SRIE Objectives 1.2.1, 1.2.2 and 1.2.3.

for any increase in background traffic on SH1. Opus has indicated to Fonterra that there were approximately 12,000 vehicles per day on SH1 in 2008. In contrast, Mr Newsome's notes that there were approximately 11,000 vehicles per day on SH1 in 2015.<sup>6</sup> The reduction in overall vehicle numbers on SH1 over time, combined with the fact that the Kauri Site intersection was designed to meet a higher number of site traffic on a then busier SH1, further indicates that the proposed rules are not required.

- (e) Finally, it is important to recognise that, despite legacy rules similar to those proposed, Fonterra was not required by the Plan to upgrade the Kauri Site intersection. At the hearing, NZTA confirmed that Fonterra approached NZTA regarding potential upgrades to the intersection (and undertook one in 2012 as mentioned above), rather than that engagement being triggered by a resource consenting requirement. As a responsible operator that is conscious of its health and safety obligations, Fonterra will continue to initiate such upgrades or works, as and when they are needed. Rules in the Plan are therefore unnecessary.

### Height

13. Regrettably, as the Kauri Site was established in 1989 by a predecessor company, Fonterra does not have a record of the exact height of the building that houses the driers and boilers currently in operation. However, representatives from the Kauri Site have identified that these buildings are approximately 55m in height. Fonterra continues to seek a 65m height limit for driers, boilers, silos and stacks, to provide flexibility while appropriately managing effects.
14. Attached to this memorandum as **Appendix A** is an example of elevations for structures at Fonterra's Studholme and Pahiatua sites. The Studholme site is fully consented but not yet developed, while the Pahiatua site is both consented and developed. These elevations provide examples of possible driers and boilers at the Kauri Site.

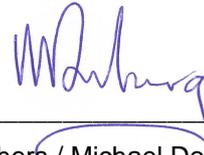
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<sup>6</sup> Primary Statement of Evidence of Mark Newsome for the New Zealand Transport Agency Regarding Plan Changes 85 A-D, 86A-B, 87, 102 and 114 at [10].

**Conclusion**

15. Fonterra is grateful to the Commissioners for the opportunity to provide this additional information. Fonterra is willing to provide further information, should the Commissioners have any further questions.

**DATED** 28 July 2017

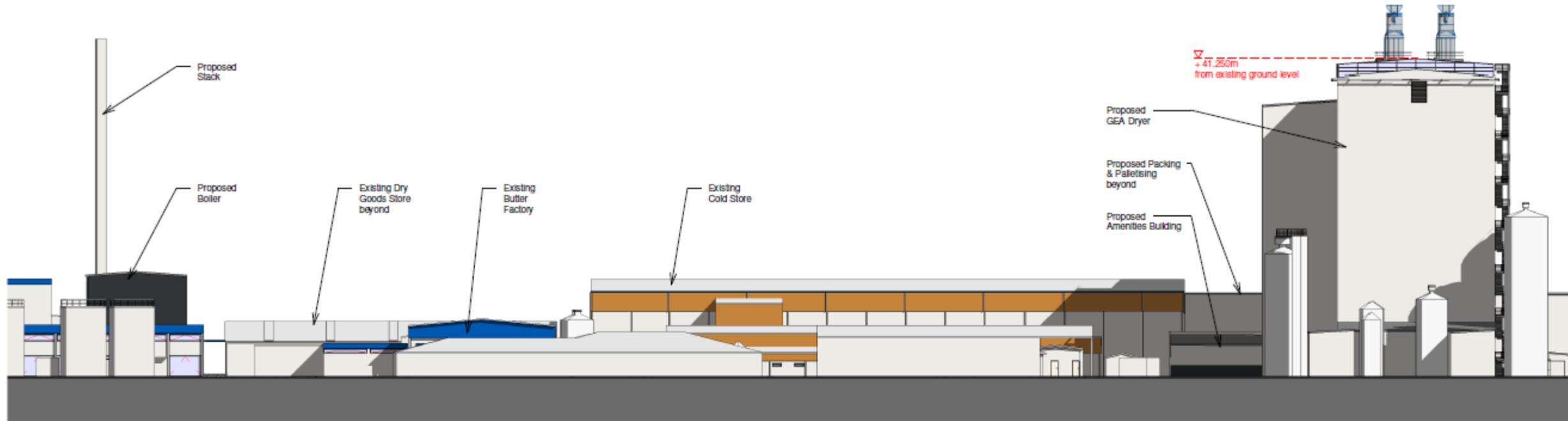


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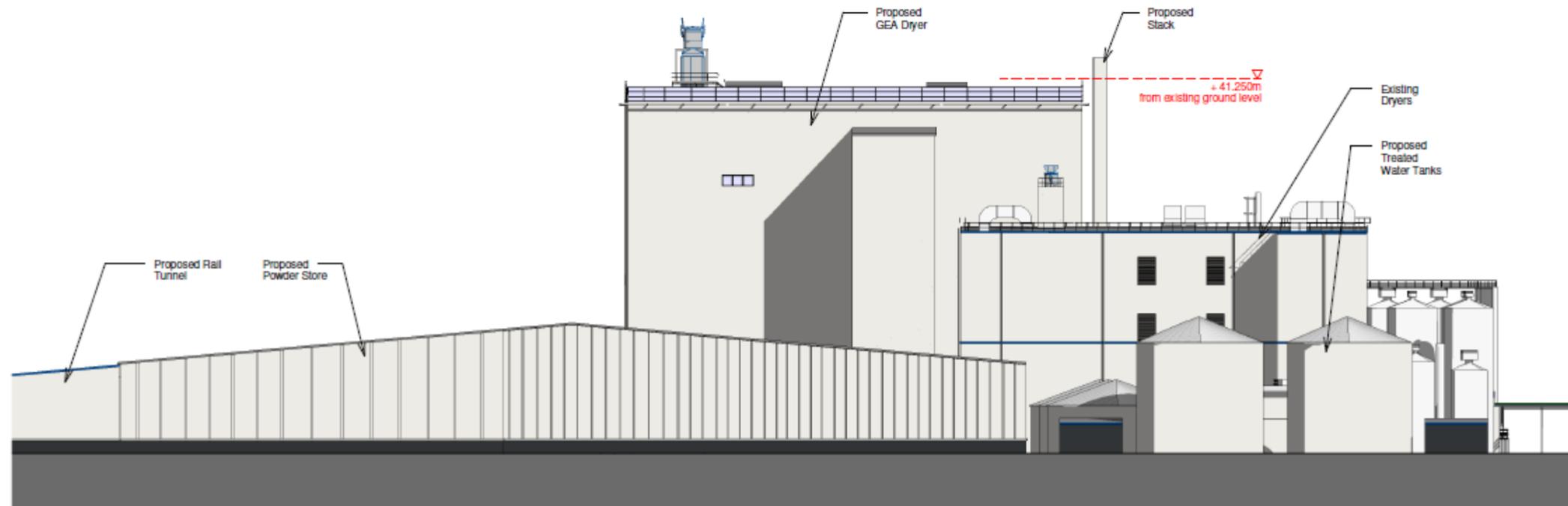
**Appendix A – Example elevations**

# PAHIATUA



**Proposed South Elevation**

Scale 1:500



**Proposed West Elevation**

Scale 1:500

REV.	DATE	REVISION DETAILS
2	19.9.13	Client Review
1	6.9.13	Client Review

Note:  
Do not scale from this drawing. Use only figured dimensions.  
The Contractor shall verify all dimensions on site and report any discrepancies to the Architect before commencing work. The copyright of this drawing remains the property of DLA Architects Limited.

Client:  
**Fonterra Pahiatua**

Project:  
**Fonterra Pahiatua Facility Development**

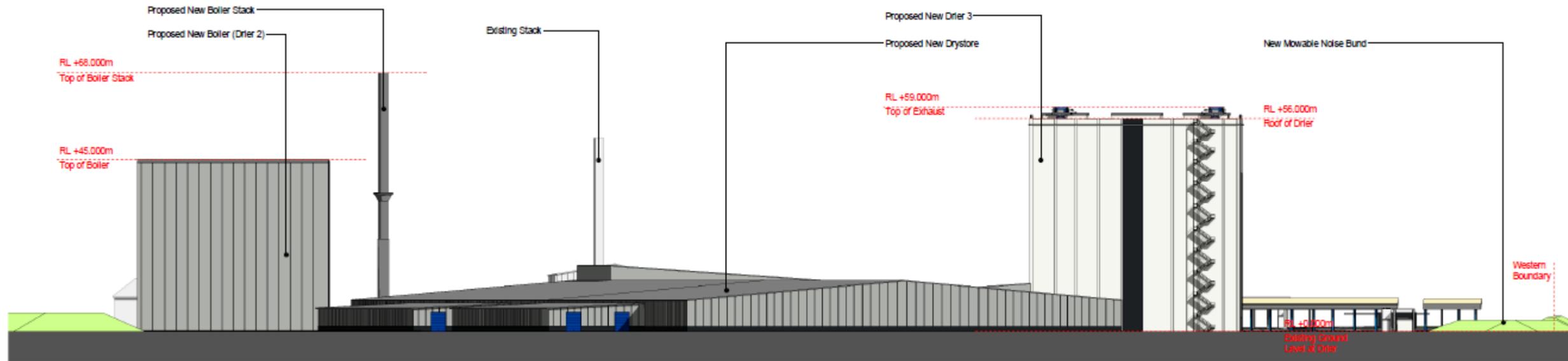
Drawing Title:  
**Proposed South & West Elevations 1 to 500**

Scales:	Date:	Drawn:
1:500 @ A3	Sept 13	JWS
	Designed:	Checked:
	GG	GG
Job No.	Drawing No.	Revision No.
P648	A4.04	2

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# STUDHOLME

NOTE: Building Heights are calculated from the Existing Ground Levels as provided by Aurecon, project no. 238079, Drawing no. 01 Rev. A- Dated 06.09.2013.



1 Proposed North Elevation 1 to 1000  
A4.02 1 : 1000

4	20/03/15	Issued for Resource Consent
3	20/01/15	Issued for Resource Consent
2	19/12/14	Client Review
1	25/08/14	Client Review
0	31/07/14	Client Review
REV.	DATE	REVISION DETAILS